88-539

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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CASE NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JAMES E. POOLE, JR., ET. AL, APPELLANTS

V.

EMMA GRESHAM, ET AL., PLAINTIFF APPELLEES

JOE FRANK HARRIS, ET AL.,

DEFENDANT APPELLEES

ON APPEAL FROM A THREE JUDGE DISTRICT COURT

OF THE NORTHERN DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT

N. Kenneth Daniel

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138 pp

QUESTIONS PRESENTED

Whether a State Court Order which, in enforcing previously precleard state election law, enjoins or delays a pending election until such time as state election law is complied with, is subject to preclearance pursuant to Section 5 of the Voting Rights Act 42 U.S.C. 1973c, before such Order may be enforced.

PARTIES TO THE PROCEEDING

The following is a complete list of all parties to the action below which is sought to be reviewed: Emma Gresham, Turetha Neely, Clayton Neely, Jr., Sharon Anfield, Donald Wright, Melvin Streetman, Earl M. Neely, Mary L. Holland, Alvin Lewis, Sr., Nollie Mae Morris and Quinton Gresham, Plaintiffs; Michael J. Bowers, Attorney General of Georgia, Russell N. Sewell, Jr., Executive Counsel to the Governor of Georgia, State Election Board of Georgia, Max Cleland, Secretary of the State of Georgia and Chairman of the State Election Board, Burke County Board of Registrars, Weston Fortson, W. E. Bessent and John M. Moseley, Chief Registrar and members, respectively, of the Board of Registrars, Burke County Board of Elections, and Ralph B. Willis, Michael N. Searles and Morris Green, Chairman and members, respectively, of the Board of

Elections, Defendants; James E. Poole, Jr., William C. Harmon, J. W. Marshall, Fred Muns, Louie B. Way and Julian Kight, Defendant-Intervenors.

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OPINIONS BELOW

The opinion of the three Judge District Court of the Northern District of Georgia which appears in the appendix hereto as Exhibit 1 is reported at_____F.2d_____ (N.D. GA. 1988).

The opinion and Order of the Superior Court of Burke County, Georgia, enforcement of which was enjoined by the District Court Order referenced above, pending such Order's preclearance, appears in the appendix hereto as Exhibit 2. The Superior Court Order is unreported.

JURISDICTION

This is an appeal from a Three Judge District Court which entered a judgment granting a permanent injunction on June 30, 1988.

A notice of appeal to this Court was duly filed in the United States District Court for the Northern District of Georgia on July 29th, 1988. A copy of the notice of appeal is included in the appendix hereto as Exhibit 3.

This appeal is being docketed in this Court within sixty (60) days from the date of the filing of the notice of appeal in the United States District Court for the Northern District of Georgia and within ninety (90) days from the date of the judgment entered by the Three Judge District Court for the Northern District of Georgia. The jurisdiction of this Court is invoked

under 28 U.S.C. Sec. 1253. Jurisdiction is also specifically conferred pursuant to 42 U.S.C. 1973c.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

42 U.S.C. 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court.

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect

to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the

District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, that such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty

days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty day period which would otherwise require objection in

accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

42 U.S.C. 1253 Direct appeals from decision of three-judge courts.

Except as otherwise provided by law, any aprty may appeal to the Supreme Court from under an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard and determined by a District Court of three judges.

O.C.G.A. 21-3-125 Qualification of voters; registration of voters purged from list of electors; determination by governing

authority of method by which registration lists are to be maintained; manner of registration of electors in municipalities maintaining own registration lists.

(a) No person shall vote in any primary or election unless he shall be:

(4) A resident of the municipality in which he seeks to vote, notwithstanding any provision of any municipal charter to the contrary; . . .

(remainder of statute set out in appendix as Exhibit 4).

O.C.G.A. 36-30-13 Special election to fill vacancies on municipal governing authority when all seats are vacant.

Except as provided in subsection (g) of Code Section 21-4-12, in the event that all

seats on the governing authority of a municipality are vacant, the election superintendent of the county in which the municipality is located shall have the authority to call for a special election to fill the vacant offices and to conduct, or to appoint a superintendent of elections for the municipality for the purpose of conducting, the special election. The board of registrars for the county shall prepare the electors list for the special election.

STATEMENT OF THE CASE

The municipality of Keysville, Georgia was incorporated by Act of the Georgia General Assembly on December 29, 1980. At the time of its incorporation, its municipal boundaries were defined as follows: "The corporate limits of said town shall extend one-half mile in every direction from the schoolhouse now located in said town of Keysville". Ga.Laws 1890-91, Vol. II, 657. The boundaries of the town of Keysville have never been changed subsequent to their designation in the Act of Incorporation.

Pursuant to its Act of Incorporation, the municipal government of Keysville consists of a mayor and five council members elected on the first Monday in January of each year. The municipal governing authority of the town of Keysville was elected, served and functioned from 1891

until approximately 1933 when, for some reason, presently unknown, the town ceased holding municipal elections and no such elections were held from approximately 1933 until 1988. The municipal governing authority did not function from approximately 1933 until 1988.

In approximately 1895, the schoolhouse referenced in the Act of Incorporation and from which the municipal boundaries of the town were measured, was destroyed and it is apparently impossible now to properly designate the municipal boundaries of the town of Keysville in accordance with their delineation in the town's Act of Incorporation. Evidence as to the former location of the schoolhouse is substantially conflicting. A State Court sitting in Burke County, Georgia has determined that "the best that can be done is to generalize areas where the lot (on which the schoolhouse was

located) might have been located". (See Exhibit 2, Burke County Superior Court Order dated December 31, 1987). Another Superior Court Judge presiding over a statutory post-election election contest, which election contest challenged the results of the January, 1988 Keysville municipal elections, concluded that "[t]his Court finds that the municipal boundaries of the City of Keysville remain undetermined and uncertain. Based upon the evidence and proceedings to date, it is evident that the boundaries, as conceived by the drafters of the 1890 Act of Incorporation, will never be determined to any degree of accuracy". (See May 23, 1988 Order of Superior Court Judge William F. Grant included in the appendix hereto as Exhibit 5). Any move in the generalized location of the old schoolhouse, which would be the center of town, would substantially affect the number of persons who would be

entitled to vote in any election for the municipal offices of the town of Keysville.

In 1985, notwithstanding the problems in locating and delineating the boundaries of the town of Keysville, certain residents of the town undertook preliminary preparations to reactivate the town by the scheduling of new municipal elections. Before these elections could take place, the Appellants herein filed a petition in the Superior Court of Burke County, Georgia seeking to restrain and enjoin elections scheduled for January 6th, 1986 on the grounds that the elections were not being held in compliance with State law. On January 17, 1986, the Superior Court issued a preliminary injunction enjoining the scheduling or conducting of municipal elections for the town of Keysville until all requirements of State law were met.

In 1987, the Georgia General Assembly

enacted Georgia Laws 1987, p. 1978, O.C.G.A. 36-30-13, which provided a method for holding elections to fill seats on a governing authority of a municipality when all such seats were vacant. The law did not in any way, however, address the municipal boundary issue for the town of Keysville. The Burke County Election Board, thereafter and pursuant to the Act referenced above, called an election to fill the seats on the governing authority of the municipality. The election was scheduled to be held on January 4, 1988. The call for the election was subsequently submitted by the Burke County attorney as chief legal officer of Burke County, Georgia, to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, for the purpose of preclearing the scheduled elections.

On September 4, 1987, the Burke County

attorney made his original preclearance submission to the Assistant Attorney General for the municipal elections scheduled for January of 1988. At the time of making the original submission, the Burke County attorney noted that "there is also controversy among the parties relative to the boundaries of said municipality". His letter concluded that "we anticipate the Courts will establish the boundaries and order an election"; however, no Court establishment of Keysville boundaries was ever had, nor was any election ordered. On November 5, 1987, the Burke County attorney followed up his original submission with another letter to the Assistant Attorney General and included with that letter a copy of a map which purported to designated the boundaries of the town of Keysville. This designation had been arbitrarily made by a tax commissioner of Burke County, Georgia

who has since discovered deeds which lead him to believe that the boundaries were improperly designated.

On December 3, 1987, the Appellants herein filed a motion to enjoin the County Election Board and Board of Registrars from conducting the scheduled January 4, 1988 elections on the grounds that the boundaries of Keysville had not been determined and consequently, the residents of the town could not be identified. The Superior Court held a hearing on this motion on December 30, 1987 and entered an Order on December 31, 1987 enjoining the January 4, 1988 elections. The Superior Court specifically found that the boundaries which had been submitted for preclearance to the United States Attorney General were not, in fact, the boundaries of the town of Keysville as defined by State law. The Court's injunction was enforcing previously

precleared Georgia Municipal Elections law which required residency within a municipality as a requirement for participation in a municipal election.

The Superior Court concluded that being unable to delineate the boundaries of the town, the Election Board would likewise be unable to determine the residents of the town for purposes of participating in such an election. The Court also specifically determined that entry of its Order did not enact or seek to administer any standard practice or procedure with respect to voting different from that in force or effect on November 1, 1964 and, therefore, the Order was not subject to Section 5 preclearance.

On December 31, 1987, the Plaintiff Appellees herein filed a motion in the District Court for the Northern District of Georgia seeking to enjoin enforcement of the State Court's Order referenced above pending

its preclearance by the United States Attorney General pursuant to Section 5 of the Voting Rights Act. A preliminary injunction was entered on that same day and subsequently, a three judge District Court was convened for the purpose of hearing the Plaintiff Appellees' motion and considering a request for a permanent injunction. On June 30, 1988, the three judge District Court entered a permanent injunction enjoining enforcement of the Superior Court's Order until such time as it had been precleared by the United States Attorney General, pursuant to Section 5 of the Voting Rights Act. Municipal elections were held for the town of Keysville on January 4, 1988 in accordance with the injunction entered by the United States District Court for the Northern District of Georgia.

THE QUESTIONS ARE SUBSTANTIAL

I.

A State Court Order enforcing previously precleared state election law and not changing any voting practice, standard or procedure is not subject to Section 5 preclearance before it may be enforced.

Although the provisions of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, have been applied to a variety of voting practices or procedures, never have the provisions of that Act been applied to require a State Court order enforcing previously precleared state election law to be precleared before the State Court order might be enforced. The provisions of Section 5 have been applied to the method of electing candidates (at large versus district), the method of selecting officials (election versus appointment), new procedures with respect to qualification and

voting, Allen v. State Board of Elections, 393 U.S. 544 (1969), the method of candidate qualification, Gangemi v. Sclafani, 506 F.2d 570 (C.A. N.Y. 1974), the location of polling places and the annexation of inhabited and uninhabited lands, Perkins v. Matthews, 400 U.S. 379 (1971) and City of Pleasant Grove v. United States,_____U.S._____, 107 S.Ct. 794 (1987), reapportionment of legislative districts, Georgia v. United States, 411 U.S. 526 (1973), changes in the form of government, Rome v. United States, 446 U.S. 156 (1980) and registration procedures for electors, N.A.A.C.P., DeKalb County Chapter v. Georgia, 494 F.Sup. 688 (N.D. GA. 1980). No Court has ever determined, however, that a change in voting procedures subject to preclearance occurs when a State Court enters an injunction prohibiting elections until a municipality complies with

previously precleared state election law.

All of the above referenced changes which have been determined to be subject to preclearance in some form or fashion, change the manner in which elections are or would thereafter be held. As this Court recognized in Allen v. State Board of Elections, 393 U.S. 544 (1969), Congress, in enacting the Voting Rights Act, "intended to reach any state enactment which altered the election law of a covered state". Id. at 566. The only election "alteration" brought about in this case by the State Court's enforcement of municipal residency requirements is, of necessity, a delay of the election from the date originally scheduled to some subsequent date when the requirements of state law had been complied with. Such "change", however, does not alter election procedures, nor is such change a permanent change which would alter

the way in which elections are thereafter held.

The Court below reasoned that by enjoining the January, 1988 elections, the State Court of necessity changed the date on which the elections would be held and that such change in the date of the election requires preclearance approval by the Attorney General pursuant to Section 5. The Appellants herein do not deny that changes in dates of elections are ordinarily required to be precleared. Appellants further recognize that if the State Court's Order were to be enforced, the scheduling of any subsequent special election would have to be precleared with the Attorney General.

The ruling of the Court below which required preclearance of the State Court Order would, when carried to its logical extreme, in effect, completely remove from

State Courts the ability to enforce their own state election laws if, in enforcing those laws, an election was delayed. The Order of the State Court affects a voting practice or procedure only to the extent that it seeks to enforce residency requirements of a statute which has been precleared. In Williams v. Sclafani, 444 F.Supp. 895 (S.D. N.Y. 1977), the Court held that "Section 5 was not intended to cover a change in ... practice ... brought about by a state court decision construing or interpreting an already precleared state voting statute". Id. at 903.

Should this Court allow the decision of the three judge Court to stand, State Courts hereafter, when faced with an obvious violation of previously precleared state election law, would be unable to enforce their own laws, but rather be required to sit idly by and let elections proceed even

if these elections were in obvious violation of state law. Such was not the intent of the Voting Rights Act nor has this Court ever suggested that Section 5 requires such preclearance.

II.

The State Court's Order implements no change in voting which is subject to preclearance, pursuant to Section 5.

The Court below relied heavily on this Court's decision in Hathorn v. Lovorn, 457 U.S. 256 (1982) in support of their decision that the Burke County Superior Court Order here involved is subject to preclearance before it may be enforced. The Hathorn case, however, dealt with a Mississippi Court Order which required compliance by a school board with certain election procedures that had been set out in a state statute, which statute had been ignored and unenforced by the school board since the statute's enactment in 1964. It is unquestioned that the underlying statute which was sought to be enforced in Hathorn was, in and of itself, subject to preclearance pursuant to the

provisions of Section 5 of the Voting Rights Act and that the statute had not been precleared at the time the Mississippi Courts sought to order its enforcement. As Justice O'Connor noted in the opinion of this Court in the Hathorn case, certiorari was granted to decide "whether a state court may order implementation of a change in election procedure over objections that the change is subject to preclearance under Section 5 of the Voting Rights Act of 1965". Id. at p. 257 (emphasis added). As pointed out by Justice O'Connor, it is not the State Court order itself that this Court required to be precleared, but rather the underlying "change in election procedure" that would have been brought about by enforcement of the State Court order.

In this case there is, however, obvious absence of any ordered change of election procedure. As noted earlier, the

only change is the delay of a previously scheduled election. Once state law has been complied with, a special election could then be called. This special election and its date would have to be precleared by the Attorney General's office However, this special election would be carried out pursuant to the same election rpocedures as would have been used initially. No changed election procedure would be effected by enforcement of the Burke County Superior Court Order.

Hathorn is also distinguishable in that, as noted in this Court's decision, no one disputed that the changes in election procedures ordered by the Mississippi Courts were "procedures" subject to preclearance pursuant to Section 5. As noted on remand, "[t]he controversy precipitating this legal battle centered around whether the method of selecting the school board would be

changed". United States v. Louisville Municipal Separate District, Board of Trustees, 557 F.Supp.1168 (N.D. MISS. 1983) at 1169. In this case, no such "change" was ordered by the Superior Court. Had the Superior Court's Order in this case dictated that all Keysville municipal elections would, thereafter, be held on a different date, that Order would be subject to preclearance. The obvious distinction in the facts of this case, when compared with the facts in Hathorn, is that the Mississippi Courts in Hathorn sought to order a change in election procedure, whereas the Court in this case sought only to enforce previously precleared state law. The Court's Order here in issue does not in any way alter the election law or procedure of Keysville.

As noted by this Court in Allen v. State Board of Elections, 393 U.S. 544

(1969), in order for preclearance to be required, there must be a "new procedure with respect to voting", which procedure "is different from the procedure in effect when the state became subject to the Act". Id. at 570. No such new procedure would be brought about by enforcement of the State Court injunction. All elections occurring in Keysville after the injunction would be held pursuant to the same "standards, practices or procedures" as existed before enforcement of the injunction.

III.

The residency requirement sought to be enforced by the Superior Court is a legitimate, precleared requirement of Georgia law for participation in Georgia municipal elections.

It is unquestioned that residency is a legitimate requirement for participating in an election. "Residency is a fundamental, positive requirement for voting in an area ...". Davis v. Gallinghouse, 246 F.Supp. 208 (E.D. LA. 1965) at 216. The Court has specifically held that a residency requirement is a factor which a state may unquestionably take into consideration in determining the qualification of voters. Lassiter v. North Hampton County Board of Elections, 360 U.S. 45 (1959). In the case of Dunn v. Blumstein, 405 U.S. 330 (1972), at 343, this Court stated:

> We have in the past noted approvingly that the states have the power to require that voters be bona fide residents of the relevant political subdivisions. An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny.

Pursuant to the provisions of the Georgia Municipal Elections Code cited herein (O.C.G.A. 21-3-125), residency is a positive requirement for participation in a Georgia municipal election. The statute requiring residency was adopted subsequent to November 1, 1964, but has been precleared pursuant to the provisions of Section 5 of the Voting Rights Act.

Without the benefit of a positive delineation of the municipal boundaries for the town of Keysville, in accordance with the Act of Incorporation, no clear determination can be made as to who is entitled to participate, either as a

candidate or as an elector in any such election. As noted in the findings of fact of the Burke County Superior Court Order, at best, only a generalization of the center of town could be made and based on the movement of the center of town, there would be a substantial change, in terms of percentage, in the number of persons authorized to participate in any such election.

As pointed out in Davis v. Gallinghouse, 246 F.Supp. 208 (E.D. LA 1965) at 216, "a man's rights are valuable only insofar as they are protected. One of the ways to do this is by careful scrutiny of those who assert those rights, to insure that the assertor is indeed entitled to them, lest the rights of the true owners be diluted by the claim of fraud". The Davis Court thereafter noted that part of the right to vote is "the right not to have your vote diluted by the vote of those who are

unqualified". Id. at 216. This Court has also noted that "[t]he right to vote can be affected by a dilution of voting power, as well as by an absolute prohibition on casting a ballot". Allen v. State Board of Elections, 393 U.S. 544 (1969) at 569.

In protecting the rights of the true residents of the municipality of Keysville, therefore, the Superior Court was forced to enjoin the scheduled elections until municipal residency could be determined. In accordance with the above cited authority, a shotgun approach to defining municipal boundaries would not be adequate to protect the voting rights of the true residents of Keysville. The Superior Court's Order enforcing this residency requirement should not be subject to preclearance merely because by enforcing the municipal residency requirement, the Court was forced to delay municipal elections.

IV.

There is no changed voting standard, practice or procedure which could be considered by the Attorney General or a reviewing Court, nor any standards which could be used by the Attorney General or a reviewing Court for considering preclearance of the Burke County Superior Court Order, if such preclearance is required.

The Attorney General has promulgated regulations setting out the factors that the Attorney General considers relevant and the standards by which the Attorney General will be guided in making any Section 5 determinations and in defending Section 5 declaratory judgment actions. See 28 C.F.R. 51.51, et seq. Generally, as set out in those regulations, the Attorney General, when considering any submission for preclearance, seeks to determine whether the submitted change has the purpose of or will

have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. As set out in 28 C.F.R. 51.57, the relevant factors used by the Attorney General in making determinations with respect to submitted changes are as follows:

> (a) The extent to which a reasonble and legitimate justification for the change exist;
> (b) The extent to which the jurisdiction followed objective guidelines and fair and conventional procedures in adopting the change;
> (c) The extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change; and
> (d) The extent to which the jurisdiction took the concerns of members of racial and laguage minority groups into account in making the change.

In light of the standards set out above, it is obvious that the Attorney General has never envisioned being required to preclear a Superior Court's Order which enforces

previously precleared state law. Under the facts in Hathorn, however, it would be easy to see where the Attorney General could use the above cited standards in determining whether the underlying statute which the Mississippi Courts ordered enforced should or should not be precleared.

In this case, by applying the statutes referenced above, the Attorney General would basically be called upon to second guess a Superior Court Judge and the remedy which the Judge chose to use in enforcing precleared election law. It would seem impossible for the Attorney General to determine whether in this case legitimate justification existed for the Burke County Superior Court's Order. That would obviously be a duty of an appellate court, not the Attorney General. It would also be impossible, if not unconstitutional, for the Attorney General to consider the extent to

which the Burke County Superior Court had afforded members of racial and language minority groups an opportunity to participate in its decision. It is ludicrous to suggest that a Court would or should, under any set of circumstances, allow such participation in the judicial decision making process. Finally, it cannot be rationally argued that the Burke County Superior Court's Order should be evaluated by the Attorney General in light of the extent to which the Court "took the concerns of members of racial and language minority groups into account" in making the decision. 28 C.F.R. 51.57(b).

As noted from the above, there is in this case an obvious absence of any change in election rpocedure that could be evaluated by the Attorney General of the District Court for the purpose of determining whether to preclear the State Court's order.

V.

CONCLUSION AND SUMMARY

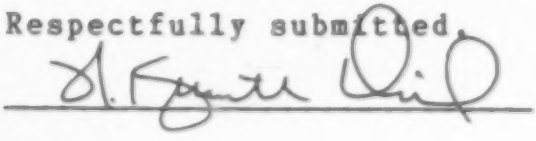
The Burke County Superior Court's Order of December 31, 1987 is an Order merely seeking to enforce previously precleared State election law. The Order does not alter, amend or change any election standard, practice or procedure and all elections which would be carried out in the municipality of Keysville subsequent to the Court's December 31, 1987 Order, would be carried out in accordance with the same standards, practices or procedures as hexisted prior to the Court's Order.

The Superior Court Order merely seeks to enforce a municipal residency requirement of Georgia state election law and to require that an accurate determination of municipal residency be made in accordance with State law before elections can be held. The residency requirement of Georgia

municipal election law is a legitimate requirement, consideration of which this Court has long recognized and authorized.

Allowing the Order of the three-judge District Court below to stand would, in essence, severely restrict a State Court's ability to enforce its already precleared election law. In addition, it is obvious that the standards by which the Attorney General uses to determine preclearance are not at all appropriate for reviewing Court Orders enforcing previously precleared state election law. For the reasons set forth above, Appellants respectively request that this Court reverse the ruling of the three-judge District Court and allow enforcement of the Burke County Superior Court's Order.

Respectfully submitted,



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APPENDIX

1987.

/s/ Albert M. Pickett

Presented by: JUDGE, SUPERIOR COURT,

N. Kenneth Daniel AUGUSTA JUDICIAL CIRCUIT

Attorney for

Plaintiffs

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Augusta, Georgia 30901

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

EMMA GRESHAM, ET AL.,	)	
Plaintiffs	)	CIVIL ACTION NO.
v.	)	1:87-CV-867-JOF
JOE FRANK HARRIS,	)	
ET AL.,	)	
Defendants	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that JAMES E. POOLE, JR., WILLIAM C. HARMON, J. W. MARSHALL, FRED MUNDS, LOUIE B. WAY, and JULIAN H. KIGHT, Defendant intervenors in this action, do hereby appeal to the Supreme

Court of the United States from the Final Order of the three Judge District Court convened in this action, which Order granted the Plaintiffs' motion for a permanent injunction and which Order is dated and was filed in this action on June 30, 1988 and was entered on the docket on July 8, 1988.

This appeal is taken pursuant to 28 U.S.C. Sec. No. 1253.

This 28th day of July, 1988.

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/s/ N. Kenneth Daniel
N. KENNETH DANIEL
As attorney for Defendant intervenors

EXHIBIT 4

21-3-125. Qualifications of voters; reregistration of voters purged from list of electors; determination by governing authority of method by which registration lists are to be maintained; manner of registration of electors in municipalities maintaining own registration lists.

(a) No person shall vote in any primary or election unless he shall be:

(1) Registered as an elector in the manner prescribed by law;

(2) A citizen of this state and of the United States;

(3) At least 18 years of age;

(4) A resident of the municipality in

which he seeks to vote, notwithstanding any provision of any municipal charter to the contrary; and

(5) Possessed of all other qualifications prescribed by law.

(a.1) (1) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.

(2) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

(b) Any person who possesses the qualifications of an elector except those concerning age shall be permitted to register to vote if such person will acquire such qualifications within six months after the day of registration; provided, however, that such person shall not be permitted to vote in a primary or election until the

acquisition of such qualifications.

(c) Notwithstanding any other provision of this article, any person who was qualified and registered to vote on September 1, 1968, shall not be required to reregister under the terms of this article unless such person shall have become or becomes disqualified to vote by reason of having been purged from the list of electors or for any other reason whatsoever, in which event such person shall, in order to become registered to vote, reregister under the terms of this article.

(d) The governing authority of any municipality may be charter, ordinance, or resolution elect either to maintain its own registration or to provide for the city to use the county registration list, stating that any person who is a resident of the municipality and who is registered as an elector with the board of registrars of the county shall be eligible to vote in a

municipal primary or election. If the municipality elects to maintain its own registration list, the municipality shall use the form of the registration card and the questions to be propounded to an applicant as prescribed in Code Section 21-2-217. The qualifications of a person seeking to vote in a municipal primary or election shall be determined by this chapter and the Constitution of Georgia. Provided, however, municipalities which are the county seats of counties having populations of not less than 32,500 and not more than 34,100 according to the United States decennial census of 1970 or any future such census shall not be authorized to maintain their own registration lists but shall use the registration list of the county and such county shall be required to furnish such

list to the municipality. Provided, further, that any such counties shall be required to furnish a list of the registered voters residing within such municipalities to the governing authorities of the muncipalities no later than seven days before any election or primary covered by this chapter is to be held in such municipalities.

(e) In a municipality maintaining its own registration list, any person desiring to register as an elector shall apply to a registrar or a deputy registrar and shall furnish such officer with proper identification and information which will enable him to fill in all blanks appearing on the registration card. When any person who seeks to register as an elector is asked to provide proper identification by a registrar or a deputy registrar, as required by law, it shall be sufficient for the

applicant to exhibit his valid driver's license, birth certificate,credit card, food stamp card, social security card, check-cashing card, passport, school record, work identification record, utility bill, school identification, certified copy of marriage license, or Medicaid, medicare, or welfare identification. On completion of the form, the officer shall administer the oath to the applicant and then have him sign it, and the officer shall attest it. Upon request of the applicant, the officer taking the application shall read or repeat the oath distinctly to the applicant; and, if the applicant cannot sign his name, the officer shall sign it for him, the applicant making his mark thereto.

EXHIBIT NO. 5

IN THE SUPERIOR COURT OF BURKE COUNTY

STATE OF GEORGIA

IN RE: CONTEST OF)	
ELECTION RESULTS OF)	CIVIL ACTION NO.
THE KEYSVILLE)	88-V-21
MUNICIPAL ELECTIONS)	
HELD JANUARY 4, 1988.)	

ORDER

This case is presently before the Court on an election contest from the election conducted in Keysville, Burke County, Georgia, on January 4, 1988. The primary issue of the contest, as well as of all proceedings leading up to the subject election and contest, involves a question of the location of the municipal boundaries of

the city of Keysville.

FINDINGS OF FACT

1. Factual History of the Dispute

The City of Keysville, Georgia was incorporated in 1890 pursuant to Georgia Law 1891-91, Vol. II, p. 657, No. 246, Sec. II. This act directed that the boundaries of the city would extend one-half mile in every direction from the schoolhouse which was then located in the town of Keysville. This schoolhouse, known as the "Academy", was destroyed in approximately 1895. The boundaries have not been charged or redesignated since that date, although problems with the location of the boundaries apparently existed as early as 1891, shortly after the incorporation. This fact is evidenced by an article in the March 7, 1891 edition of the True Citizen, the legal organ of Burke County, entitled "Trouble at Keysville", which indicated that the town

limits as noted in the act of incorporation "were not sufficiently circumscribed."

The incorporating act also provided that the municipal government, consisting of one mayor and five councilmembers, would be elected "on the first Monday in January, 1891, and on the same day annually thereafter an election shall be held in said town for mayor and councilmen, whose term of office shall be for one year....No one shall vote for or be eligible to said offices of mayor and councilmen who is not a bona fide citizen of said town...." (Emphasis in text) The last election was held in approximately 1933. No definite reason is offered or known as to why no elections have been held in the city since that date. The offices of the municipal government have, therefore, been vacant since approximately 1933.

There are approximately 165 registered

voters in Keysville, a majority of whom are black. For several years, a number of black residents, some of whom are parties to this litigation, tried to reactivate the municipal government.

Beginning in or about 1985, two committees were formed and met concerning the reactivation of the Keysville municipal government. The committees were called the "Steering Committee for the Reactivation of Town Government" and the "Committee to Reactivate the Municipal Government for the Town of Keysville." The members of the two committees were residents of the locality in and around the township of Keysville. The committees sought to reestablish the municipal government for the purpose of securing municipal services such as water, sewage, and other services, as well as fire and police protection, which were not previously available.

The Georgia Municipal Code Sec. 21-3-408(b) provides that in the event of vacancy in municipal offices, and if the municipal charter fails to provide a method for filling the vacancy, "the governing authority shall thereupon call a special election to fill such a vacancy." Also, O.C.G.A. Sec. 21-3-8(3) provides that all municipal elections shall be conducted by the "superintendent, registrars, deputy registrars, poll officials, and other employees" selected by the governing authority. Neither of these routes were available to the citizen groups, however, as there was no existing governing authority.

At the request of the citizens' groups, the Burke County Attorney, Mr. Preston Lewis, Jr., on behalf of the Keysville residents, contacted the Georgia Attorney General's office for advice as to how they might reactivate the municipal government.

The Assistant Attorney General, Mr. Hugh Jeffrey Lanier, responded by letter, dated August 2, 1985, and advised the citizen committees that the following methods of action were available to them:

(a) Request the Governor to appoint persons to fill the existing vacancies;

(b) File an action in the Superior Court to declare the offices vacant so that the Governor could appoint persons to fill the existing vacancies;

(c) Conduct a "town meeting" to elect temporary officers for the purpose of holding an election; and

(d) Request the General Assembly to provide by local act temporary officers and a method of election for permanent officers.

The Georgia Constitution, Article V, Sec. II, Para. VIII provides that "[w]hen any public office shall become vacant by

death, resignation, or otherwise, the Governor shall promptly fill such vacancy unless otherwise provided by this Constitution or by law." In this case, however, the Governor has, on the advice of Mr. Lanier and the Governor's Executive Counsel, refused to make such appointments due to the uncertainty of the municipal boundaries. There is no evidence in the record that an action was ever filed in the Superior Court to delcare the offices vacant.

On September 9, 1985, a town meeting was had in accordance with Mr. Lanier's instructions. Turetha Neeley and Upton Cochran were elected to explore the legal requirements for reestablishment of the active government, and were later elected co-superintendents of elections and given the oath of office by the Probate Judge of Burke County. A special election was set

for January 6, 1986, and they began publishing notices concenring the election in the True Citizen.

The following persons qualified and ran for office:

Emma Gresham - Mayor

Clayton Neely, Jr. - Councilmember

Sharon Anfield - Councilmember

Donald Wright - Councilmember

Melvin Streetman - Councilmember

Earl M. Neely - Councilmember

None of the above-named individuals were opposed in the election, therefore, on December 30, 1985, after the qualifying period had closed, these persons were declared elected and the oath was administered to them by the Probate Judge of Burke County.

It was at or about this point that the litigation concerning these matters began. But before discussing the procedural history

of this case, it is appropriate to examine the difficulties which have arisen in determining the municipal boundaries of the city of Keysville.

A number of persons have attempted to define the municipal boundaries through various means. In early 1985, it is alleged that Herman Lodge and unknown others were seen posting signs immediately outside the current residential areas of the township of Keysville which purported to represent the town limits.

The most extensive research was conducted by Mr. James Bailey, the Chief Appraiser and Tax Assessor for Burke County. Mr. Bailey began his independent research after having been asked by the County Commissioners to assist some lawyers in determining the city boundaries. Mr. Bailey prepared a map, from which the voters list would later be prepared for the January 4,

1988 election, based upon the following documents:

1. Deed from L. A. Clarke to Thomas B. Daniel, dated April 7, 1890 and recorded in Deed Book V, pp. 77-8.

2. Deed from Thomas P. Daniel to Augusta Glass Works, dated April 9, 1890 and recorded in Deed Book V, pp. 77-8.

3. Deed from Augusta Glass Works to S. M. Whitney, dated August 31, 1983 and recorded in Deed Book X, pp. 444-45.

4. Deed from Phil P. Johnston to the Trustees of the Methodist Church, dated November 22, 1894 and recorded in Deed Book 5, p. 483.

5. Plat of the town of Keysville prepared by Matthew S. Lively, dated September, 1906, File No. A-3427.

It is important to note that Mr. Bailey's search was for the location of the Academy lot, not the school itself. The

incorporating act set the measure of the city boundaries from the location of the schoolhouse. Mr. Bailey's estimates were taken from the center of what he purported to be the location of the Academy Lot. Even then, Mr. Bailey has admitted, he has not been able to, nor could he, determine the exact location of the schoolhouse.

In June of 1987, Mr. John Murphy, a Special Assistant Attorney General was employed by Mr. Lanier to examine the title records at the Burke County Clerk's Office. The Georgia Attorney General's office staff also met with Keysville citizens in this regard and interviewed a longtime citizen, Mr. Henry Key. Still, they were unable to ascertain the precise location of the schoolhouse, but did reach a determination as to a generalized location. This generalized location was at a point some 200 feet west and 200 feet south of the location

designated by Mr. Bailey.

Mr. Henry Key, a longtime resident of Keysville, having been born there on January 8, 1895, has in his affidavit stated that based upon conversations with his parents and other residents, the Keysville Academy, then a school for whites, stood just northeast of the present location of the Keysville Methodist Church, next to a grove of large oak trees. This would place the Academy's location some 250 feet northeast of the location designated by Mr. Bailey.

A memorandum was located by Ms. Opal A. Davis, the former secretary of the Keysville United Methodist Church, a memorandum which she states she prepared, indicating that a tornado struck Keysville in the late 1890's during which all of part of the Church roof was blown off, that it was in the daytime, because the nearby school was severely damaged and members' children were involved.

This memorandum supports the earlier assertions of Mr. Key.

Finally, Mr. James Smith, the Burke County School Superintendent, located a deed in the Burke County Board of Education files which apparently had never been recorded at the Burke County Courthouse. This deed purports to convey the Academy Lot. The deed gives a generalized description of the property which is consistent with at least one of the deeds relied on by Mr. Bailey, but is inconsistent with others. This deed would appear to move the location of the Academy southwest of the location designated by Mr. Bailey.

In early 1987, Mr. Lanier prepared and presented House Bill 185 amending Chapter 30, Title 36 of the Official Code of Georgia Annotated, adding a new code section 36-30-13 which read "...in the event that all seats on the govenring authority of a municipality are vacant, the elections

superintendent of the county in which the municipality is located shall have the authority to call for a special election to fill the vacant offices and to conduct, or to appoint a superintendent of elections for the municipality for the purpose of conducting, the special election. The Board of Registrars for the county shall prepare the electors list for the special election."

In August of 1987, Mr. Lanier, in an opinion to the State Elections Director, stated that it is the duty of the County Elections Superintendent to call such a special election to fill vacancies and he shall be required to do so. This opinion was communicated to Ralph B. Willis, Burke County Board of Elections Superintendent. Mr. Lanier further advised that "based upon the investigation conducted by our office in

reviewing deed records and maps, and interviewing elderly citizens...the boundaries appear capable of being sufficiently fixed as to determine the electors of the Town of Keysville...[and that] the Board of Registrars of Burke County is required to prepare an electors list for the special election."

Mr. Willis then contacted the Burke County Attorney, Mr. Lewis, who arranged for him to receive a map from the County Property Tax Office which purported to delineate the city boundaries. This was the map prepared by Mr. James Bailey, mentioned earlier. This map was used to compile a list of electors. Mr. Willis, pursuant to the instructions of Mr. Lanier and O.C.G.A. Sec. 36-30-13, called a special election for January 4, 1988. The voters list, map, and call for the election were then submitted to the United States Attorney General's office

for preclearance under Section 5 of the Federal 1965 Voting Rights Act (infra) and the same were precleared on December 9, 1987.

On January 4, 1988, the elections were conducted. And it is from these elections that the case before this Court arose.

2. Procedural History of the Dispute

A. Burke County Superior Court, Poole, et al., Civil Action No. 85-V-414. This action was filed on December 31, 1985. At that time the Defendants were seeking to schedule and conduct municipal elections. The Plaintiffs sought to enjoin these elections on the grounds that:

(1) the municipal boundaries were inexact; and

(2) the scheduling had not been done in compliance with the Georgia Municipal Election Code.

Prior to the filing of this action, on

December 31, 1985, the Plaintiffs sought and obtained a Temporary Restraining Order. The Court, in granting the temporary restraining order, made the following findings of fact: (a) No proper election superintendent had been elected according to law; (b) There existed no defined municipal boundaries from which a list of certified electors could be drawn, candidates qualified, or electors qualified; (c) The requirements of the Georgia Municipal Election Code had not been met or followed concerning scheduling of elections or concerning the qualifications of candidates; (d) There had been no proper scheduling of the municipal election; and (e) There had been no property qualification of candidates. Therefore, the Court restrained and enjoined the defendants from taking any actions regarding the scheduling or conducting of municipal

elections until all requirements of the Georgia Municipal Elections Code had been met. Further, he gave the defendants until 2:30 p.m. on January 6, 1986 to show that proper procedures had been taken or he would issue a preliminary injunction.

On January 17, 1986, the Court issued a Preliminary Injunction repeating the findings and restraints of the Temporary Restraining Order.

On December 3, 1987, the Plaintiff's entered a Motion for Contempt, Motion to Add a Party Defendant, and Motion to Expand the Preliminary Injunction. In this motion, the Plaintiffs admit that the new O.C.G.A. Sec. 36-30-13 (cited previously) cleared up the questions of the scheduling of the elections, however, claimed that the boundary issue still remained to bar the holding of the elections. Further, the Plaintiffs informed the Court that Mr.

Willis, of the Burke County Board of Registrars, was planning to conduct elections on January 4, 1988. They therefore sough to add Mr. Willis as a party defendant to that action. A hearing was held on this Motion on December 30, 1987.

On December 31, 1987, the Court issued an order adding Ralph B. Willis, as Superintendent of Burke County Board of Elections, as a party defendant. The Court further enjoined the elections scheduled for January 4, 1988 holding that the defendants were enjoined and restrained from undertaking any actions regarding the scheduling or conducting of municipal elections until the municipal boundaries had been properly delineated in accordance with the law. The Court also found that the requirements for preclearance and approval under Section 5 of the 1965 Federal Voting Rights Act were not applicable to its order because the Court's order did not "enact or

seek to administer any standard or procedure with respect to voting different from that in force or effect on October 1, 1964." Further, the Court held that its order did not change the boundaries as submitted to the United States Attorney General for preclearance according to Section 5, "but rather determines that the location of those boundaries is not supported by the evidence."

B. United States District Court, Northern District of Georgia, Gresham, et al., No. C87-867A. This action was filed on April 29, 1987 seeking declaratory and injunctive relief against state officials and agencies for failure to appoint persons to fill vacancies or conduct elections for the municipal government of Keysville, and for failure to enforce the provisions of the 1st, 13th, 14th and 15th Amendments of the U.S. Constitution and Sections 2 and 5 of

the Voting Rights Act of 1965, 42 U.S.C. Secs. 1973 and 1973c. Plaintiff's complaint alleges that "Defendant's refusal to fill the existing vacancies...is a standard, practice, or procedure with respect to voting different from that previously in force or effect within the meaning of Section 5, that may not be implemented without prior approval of the Attorney General or the United States District Court of the District of Columbia.

On December 30, 1987, the Plaintiffs submitted a Motion for Temporary Restraining Order and a Preliminary Injunction restraining and enjoining implementation of the Burke County order issued orally that same date absent compliance with the preclearance provisions of Section 5 of the Voting Rights Act. The motion was granted.

On December 31, 1987, Plaintiffs in the Burke County action sought to intervene, and

their application was granted.

After a hearing on January 14, 1988, before a three judge panel, the preliminary injunction was granted. The panel ruled that a state court may not stop an election, or change an election date, without preclearance under Section 5 of the 1965 Voting Rights Act. No written order or opinion has yet been issued in that case.

C. Challenge of Election to Burke County Board of Registrars 1/4/88.

The elections took place on January 4, 1988. On that same day, Joseph Cochran, Sr. and his wife challenged 41 voters, 21 of whom actually voted in the election on the grounds that the boundaries of the city had not been determined and that the residency of the voters could not be established. Their challenges were heard by the Board of Registrars after the polls closed and were denied. No appeal was made of this

decision.

The election was held as scheduled. The results of the election were as follows, broken down by candidate, race of candidate, and number of votes received:

MAYOR Gresham (bl) - 75 Cochran (Wh) - 65

Council

Post 1	Poole (Wh) - 67	Rucker (Bl) - 65
Post 2	Lewis (Bl) - 78	Padgett (Wh) - 64
Post 3	Holland (Bl)-79	Munns (Wh) - 64
Post 4	Morris (Bl) -78	Terrell (Bl) - 64
Post 5	Neely (Bl) - 74	Russell (Wh) - 68

Each race was decided by a margin of less than the number of challenged voters who actually voted. Two of the candidates elected, Mary Holland and Nollie Mae Morris, reside within the boundaries as delineated by Mr. Bailey on the map used, but would reside outside the boundaries if based on the location indicated by the unrecorded schoolhouse deed.

D. Burke County Superior Court, In re: Contest of Election Results of the Keysville Municipal Elections held Jan. 4, 1988, Civil Action No. 88-V-21. This action was filed on January 25, 1988. It was origianlly submitted as a Petition to Emma Gresham, Mayor elect, Ralph B. Willis, Burke County Elections Superintendent, the Burke County Board of Registrars and the Burke County Superior Court. The governing authority, however, at a meeting of the town council conducted on January 13, 1988 found that O.C.G.A. Sec. 21-31-420 required that all members of the governing authority disqualify themselves from judging the contest. This decision was appealed to the Superior Court of Burke County, and came before this Court as a result of an Executive Order issued by the Governor of the State of Georgia, the Honorable Joe Frank Harris, dated February 29, 1988.

This action is premised on the following grounds:

(1) That illegal votes have been received sufficient to change or place in doubt the results of the election;

(2) That certain candidates elected are ineligible for office because they are not residents of the municipality; and

(3) That the municipal boundaries "are indeterminable to such an extent that it is impossible to determine conclusively which electors are entitled to vote at the municipal elections and which persons are entitled to offer as candidates for the municipal elections."

CONCLUSIONS OF LAW

The nomination, election, or eligibility of any person seeking nomination, having been nominated, or elected may be contested by any person who was a candidate at such primary or election

or by any aggrieved elector who was entitled to vote for such person. O.C.G.A. Sec. 21-2-521. The grounds for such contest may be as follows:

(1) Misconduct, fraud, or irregularity by any primary or election official(s) sufficient to change or place in doubt the result;

(2) When the defendant is ineligible for the nomination or office in dispute;

(3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;

(4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or

(5) For any other cause which shows that another was the person legally nominated, elected or eligible to compete in

a run-off primary or election. O.C.G.A. Sec. 21-2-522.

The United States Congress has adopted, and this State and its political subdivision are subject to, the Federal Voting Rights Act of 1965, 42 U.S.C. Sec. 1973(c) which states that whenever a State or political subdivision shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that such does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or may submit same to the Attorney General of the United States for approval.

DISPOSITION

This Court finds that all questions presented to it in the course of this election contest have been previously litigated, as noted in the foregoing findings of fact, and continue to be litigated both in Burke County Superior Court, Civil Action No. 85-V-414, and U.S. District Court, Case No. C87-867A. This dispute does not concern matters regularly the subject of an election dispute, but rather surrounds the issue of the municipal boundary.

This Court further finds that the municipal boundaries of the City of Keysville remain undetermined and uncertain. Based upon the evidence and proceedings to date, it is evident that the boundaries as conceived by the drafters of the 1890 Act of Incorporation will never be determined to any degree of accuracy or certainty. What

the people of the township of Keysville require is bold legislative action on the part of their representatives to re-define and establish the municipal boundaries in such a manner as will satisfy all parties to this litigation. Such action is, however, purely legislative and not within the reach of this Court's power and authority.

Therefore, it is the finding and judgment of this Court that based upon the map and voter's list as submitted by the Burke County Board of Registrars and precleared and approved by the United States Attorney General, the results of the election of January 4, 1988 are confirmed. This finding and order, however, shall not become effective for a period of not more than thirty (30) days from the date of this order, during which time this Court requests and directs the Office of the Attorney General of the State of Georgia to take

such actions as necessary to seek preclearance and approval under Section 5 of the 1965 Voting Rights Act of the December 31, 1987 order issued by the Superior Court of Burke County in the case of Poole v. Lodge, Civil Action No. 85-V-414.

This Court does take notice of and has received the Motion to Dismiss the Election Contest Petition filed by respondent, Mayor Emma Gresham. This motion is moot because of the Court's present ruling.

IT IS SO ORDERED:

This 23rd day of May, 1988.

/s/ William F. Grant

WILLIAM F. GRANT, Chief Judge
Superior Court, Northern
Judicial Circuit

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Appellants herein, hereby certifies that service of the within and foregoing jurisdictional statement was made on the 26th day of September, 1988 by depositing, in the United States Post Office with first class postage prepaid to each addressee (counsel of record) named below, three copies of this jurisdictional statement, all in accordance with the provisions and requirements of Rule 28, specifically 28.3 and 28.5 of the Rules of the Supreme Court. The counsel of record served with this jurisdictional statement are as follows:

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Atlanta, Georgia 30334

Preston B. Lewis, Jr.

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Waynesoboro, Ga. 30830

Laughlin McDonald

44 Forsyth Street, N.W.

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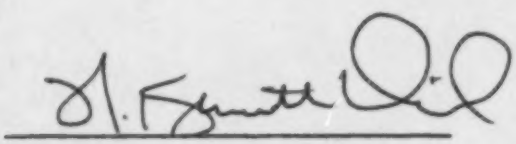
Atlanta, Georgia 30303

The undersigned further certifies that by service upon the counsel of record named above, all parties required to be served, have been served.



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